



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
Hall of Justice and Records
400 County Center
Redwood City, California 94063-0965

PEGGY THOMPSON
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October 8, 2004

Dear Sir/Madam:

California Rules of Court, Rule 981 requires that all proposed changes to a court's Local Rules be distributed for public comment. We are making these proposals available here for you to review and comment.

Any comments that you may have regarding the proposed changes to our Local Rules should be submitted in writing to the attention of the chairperson of our Court's Local Rules Committee:

The Honorable Rosemary Pfeiffer
Chairperson, Local Court Rules Committee
Superior Court of California, County of San Mateo
400 County Center, 2nd Floor
Redwood City, CA 94063
FAX (650) 363-4698

Please refer to the proposed rule that you are commenting on by the Proposal number that starts with "LR04B-xx." Comments should be received in our office no later than 5 P.M., November 22, 2004. Thank you for your attention to this matter.

Sincerely,

Peggy Thompson

Peggy Thompson
Court Executive Officer

Proposal Number 04B-01	
Title	PETITION FOR APPOINTMENT OF A CONSERVATOR
Summary	The proposed change to Rule 4.81.1 will require a petitioner requesting Dementia Authority to provide 3 copies of the required documents along with the original when filing the petition. Two copies will be given to the Court's Probate Investigation division.
Current Local Rule	See language below. Current Rule requires petitioner to provide only two copies of the petition documents, one of which is for the Court Investigator's office in addition to the original. The other copy is returned to filer.
Discussion	The Probate Operations Reengineering Committee recommends the change in the Local Rule 4.81.1 to assist the staff in preparing the package of case information for the independent counsel or private defender who has been appointed to the case. Currently, a staff person has to take apart the file and make a copy of the document and then reassemble the file. Adoption of this change will save staff considerable time in preparing the packet.
Recommendation	See the changes in highlighted as indicated below.
Proposed Changes	<p><u>Rule 4.81.1 Petition for Appointment of a Conservator.</u></p> <p>A petition for establishment of a conservatorship shall requires the following forms:</p> <ol style="list-style-type: none"> (1) Petition for Appointment of Probate Conservator (GC-310); (2) Confidential Supplemental Information (GC-312); (3) Notice of Hearing (GC-020); (4) Referral for Court Investigator's Report (GC-330); (5) Capacity Declaration-Conservatorship (GC-335); (6) Citation (GC-320); (7) Confidential Conservator Screening (GC-314); (8) Duties of Conservator and Acknowledgment of Receipt of Handbook (GC-348); (9) Notification to Court of Addresses (local form); and (10) Appointment of Probate Referee (Estate) local form. <p>All filings regarding conservatorships [initial petitions and all subsequent petitions or other documents] must consist of an original and two<u>three</u> copies. Signatures should be made with blue ink. The Clerk will retain the original and one copy of all documents filed. (The Clerk will deliver the copy to Court Investigators.) The second copy will be returned to the party for his or her records, stamped "endorsed-file". The information contained in the Confidential Supplemental Information and Confidential Conservator Screening are not part of the public record.</p> <p>For Petitions requesting Dementia Authority Powers, filings must consist of an original and three copies of all required documents. (The clerk will deliver two copies to the Court's Probate Investigators). Reference: Probate Code section 1821; California Rules Of Court, Rule 7.1050.</p> <p>(Adopted, effective July 1, 2004 [former Rule 4.81(a)])(Amended, effective January 1, 2005)</p>

NOTE: Deleted wording is stricken "~~conservator~~"
New wording is underlined "conservator"

Proposal Number 04B-02

Title	CIVIL JURY INSTRUCTIONS – INCLUSION OF REFERENCES TO CACI
Summary	The Judicial Council adopted California Rules of Court, Rule 855, where the Judicial Council approved a set of civil jury instructions for use in California. These civil instructions are the official instructions for use in California. The proposed changes to our Local Rules updates our Rules to include reference to these official jury instructions.
Current Local Rule	See Below.
Discussion	While the “official” set of jury instructions that were approved by the Judicial Council are not required, but only strongly encouraged for use, our Local Rules should refer to them as one of the acceptable versions of jury instructions that the parties or counsel may use before this court. Adding reference to them only acknowledges their official status as an acceptable format to be used by counsel or parties.
Recommendation	
Proposed Changes	<p><u>Rule 2.7.1 Proposed Jury Instructions</u></p> <p>(a) In all jury trials, insofar as practicable, the instructions in BAJI, <u>CACI</u> and CALJIC shall be used. Specially prepared instructions may be refused if the subject matter is satisfactorily covered by BAJI, <u>CACI</u> or CALJIC instructions. This rule does not limit the right of counsel to submit additional instructions properly numbered in consecutive order that are not covered by BAJI, <u>CACI</u> and CALJIC; nor does it relieve counsel of the responsibility of making any necessary substantial modifications to the BAJI, <u>CACI</u> or CALJIC instructions.</p> <p>(b) The office of the court administrator will supply a numbered master list of all BAJI, <u>CACI</u> and CALJIC instructions maintained by the court. It is the responsibility of counsel in each case to submit a numbered list of proposed BAJI, <u>CACI</u> or CALJIC instructions as are needed at the commencement of trial. The office of the court administrator will then supply print-out copies of all BAJI, <u>CACI</u> or CALJIC instructions approved by the trial court.</p> <p>(c) The Trial Department shall determine in its discretion the timing of submission of proposed jury instructions.</p> <p>(Amended, effective January 1, 2002)</p> <p><u>Rule 2.7.2 Duty Of Counsel with Respect to Jury Instructions</u></p> <p>Before delivery of proposed BAJI, <u>CACI</u> or other instructions to the trial judge and opposing counsel, counsel shall fill in all blanks, make all strike-outs, insertions and modifications therein which are appropriate to the case. Counsel must give particular attention to the completion of all blank portions of BAJI 2.60 before submission to the trial judge. Submission of a form, which requires additions or modifications to constitute a complete and intelligible instruction, shall not be deemed a request for such instruction.</p> <p>In addition to a hard copy of the proposed jury instructions, counsel shall</p>

provide the modified instructions on a computer diskette, and a clean copy of the instructions to be given to the jury.

(Adopted, effective January 1, 2000)

Rule 2.7.3 Form of Proposed Jury Instructions (CCP §§ 607a, 609, CRC 517)

All proposed jury instructions, excepting BAJI or CACI instructions, shall conform to the requirements of CRC, rule 229, and § 5 of the Standards of Judicial Administration, including placing thereon the citations of authorities, indication of the party requesting the instructions and respects in which related BAJI or CACI instructions have been modified. Any jury instructions requested after the conclusion of taking evidence shall be in writing. The court, in its discretion, may permit instructions to be sent into the jury room in "Booklet Form". In "Booklet Format" the text of the instruction is printed continuously on the page and may result in several instructions to the page. Such instructions may be accompanied by a table of contents.

(Adopted, effective January 1, 2000) (Amended, effective January 1, 2004)

Proposal Number 04B-03

Title	RULE 8.10 – COPIES OF ORDERS AND REFEREE REPORTS
Summary	Repeal Rule 8.10 since the basis for adopting it in the first place has been eliminated.
Current Local Rule	See language below.
Discussion	The Judicial Council has been conducting an on-going survey of court orders regarding appointment of Special Masters, the fees charged by the Masters and collection of fees for the Master’s services. The survey was required in order to prepare a report to the State Legislature regarding these fees. As part of the survey process, each court was required to report monthly on cases where masters were appointed and any orders issued by the Masters. Rule 8.10 was adopted in January 2002 to comply with the Judicial Council’s mandate. Early in 2004 we were notified that the courts were no longer required to submit the monthly reports. Rule 8.10 has become obsolete and serves no purpose now that the courts no longer need to submit the report and copies of the Special Master’s orders.
Recommendation	
Proposed Changes	<p><u>Rule 8.10 Copies of Orders and Referee Reports</u></p> <p>All parties or referees who file an order or report with the court, pursuant to California Rules of Court, Rules 244.1 and 244.2, must provide an additional conformed copy of the document along with the original for filing with the clerk of the court. The additional copy requirement applies to any order appointing referees pursuant to the Code of Civil Procedure sections 638 and 639, the referee’s report under Code of Civil Procedure section 643, and any order of the court concerning the compensation of the referee.</p> <p>(adopted, effective January 1, 2002) (Repealed, effective January 1, 2004)</p>

Title

**RULE 5.13 FAMILY COURT SERVICES
B. Mediation At Family Court Services**

Summary

Limitation of Review Mediation

Current Local Rule

Paragraph 8 set forth below with additions and delineations.

Discussion

This rule implements changes in scheduling review mediations to prevent overuse of mediation process when no change in circumstances.

Recommendation

Proposed Changes

RULE 5.13 FAMILY COURT SERVICES

A. Mediation Required (UNCHANGED)

B. Mediation at Family Court Services
Paragraphs 1-7 (UNCHANGED)

8. Subsequent Mediation Appointments: Unless a review mediation is requested by the Court or the mediator, parties ~~will only be given an appointment for additional mediation with~~ may not set an appointment with Family Court Services within six months of their last mediation unless authorized by the Court -an upcoming Court date-. In general, it is the policy of Family Court Services ~~policy is~~ to assign the parties the same mediator in order to provide for continuity of services and to prevent minor children from needing to be interviewed again.

9. Request for Change of Counselor (Pursuant to F.C. 3163):

- A. A peremptory challenge of a counselor is not allowed.
- B. A party may request a change of counselor as follows:
 - 1. Requesting a Client Comment Form or sending a written request to the Manager of Family Court Services outlining the reasons for the request.
 - 2. No change of counselor requests will be granted unless there is substantial showing that the counselor is biased or prejudiced against one of the parties or is unable to render a fair and impartial recommendation.
 - 3. The Manager shall review the request and shall advise the parties of the decision in writing. The Manager's decision is final.

Sections 9 through 14 renumbered 10 through 15.

C. Court Ordered Private Child Custody Evaluations:

- 1. Court appointed evaluators shall abide by the requirements of Rule 1257.3 Uniform Standards of Practice for the Court Ordered Child custody evaluation in the California Rules of Court.

2. No peremptory challenge to a Court appointed evaluator is allowed.
3. Evaluators may petition to withdraw from a case by submitting a request in writing to the court and mailing copies to the counsel for the parties. The request shall include the reason for the request and a status report on any action taken by the evaluator appointed to the case.
4. Grievance Procedure: Complaints regarding the evaluator's performance shall be submitted to the Court for review. All submitted written complaints will receive a response from the Court.
5. The evaluator may initiate an ex parte communication with the court to define the scope, process and methods of the evaluation when authorized by the order appointing the evaluator.
6. All child custody and visitation evaluations shall be ordered by the court and evaluators will be appointed under Evidence Code Section 730. The court may elect not to consider evaluations which have not been approved and ordered by the court.
7. A copy of the appointment of the evaluator under Evidence Code Section 730 will be made available to the court assigned evaluator. A court ordered evaluation may be limited in scope to the issues identified by the court.
8. Information from Children: The court relies on the judgment of its experts in making decision about when, how often, and under what circumstances children are interviewed. The expert shall be able to justify the strategy used in any particular case. Except in extraordinary circumstances, including the potential for danger to the child, children shall be informed that the information provided by the child will not be confidential.
9. Any evaluation based on interviews with only one parent shall not include a recommendation regarding custody.
10. Payment of the Evaluation: The court will order payment of the evaluation at the time of the appointment.
11. Any court ordered child custody evaluation shall be submitted to the court and counselor for the parties not less than ten (10) days before the hearing or trial.
12. A list of names of local child custody evaluators in can be obtained by contacting Family Court Services at 650 363-4561.

Proposal Number 04B- 05

Title	Rule 5.8 Trial Setting, Status Conference, and Mandatory Settlement Conference Rules
Summary	Proposed Rule change will change when the Status Conference Date is set.
Current Local Rule	See Proposed Changes Below.
Discussion	The proposed change to Rule 5.8(C) concerns changing when the Status Conference date is given. Currently, for all new matters commenced after 1-1-04, upon filing a Petition, the Clerk's office provides the date for a status conference (approx 6 months) along with the Notice of Assignment. The change is to make the setting of the status conference dependent on the filing of a RESPONSE.
Recommendation	
Proposed Changes	<p><u>Rule 5.8 Trial Setting, Status Conference, and Mandatory Settlement Conference Rules</u></p> <p>Sections A-B are unchanged</p> <p>C. Status Conference:</p> <p>1. Date set upon filing: Every Petition case for dissolution of marriage, nullity, or legal separation filed after the effective date of this rule will be assigned a Status Conference with the assigned judicial department on a date and time to be provided by the court upon filing of the Petition unless both counsel or self represented parties request that the status conference be held earlier, a judgment has been entered on all matters, or a dismissal has been fileda Response. The Conference will be set in the assigned department approximately 150120 days from the filing of the Response unless both counsel or self represented parties request that the status conference be held earlier, a judgment has been entered, or a dismissal has been filedPetition. It is the responsibility of the Petitioner Respondent to serve a copy of the Notice of Assignment and Status Conference on the Respondent Petitioneralong with the Summons and Petition. A Proof of service of the Response shall include proof that the Status Conference Notice was Summons and Petition should include proof that the Status Conference Notice was also served.</p> <p>Paragraphs 2 to 9 are unchanged.</p> <p>Sections D to F are unchanged.</p>

Proposal Number 04B- 06

Title	Rule 5.4 Case Flow Management
Summary	Section E (2) is amended to change the start date used for calculating 30 day period to file objection to having matter heard by a commissioner.
Current Local Rule	See Proposed Change Below.
Discussion	
Recommendation	
Proposed Changes	<p><u>Rule 5.4 Case Flow Management</u></p> <p>Sections A to D unchanged.</p> <p>E. Cases Assigned to Commissioners:</p> <ol style="list-style-type: none">1. Unchanged2. A party will be deemed to stipulate that all matters heard in the Family Law Department may be heard and disposed of by a Commissioner, including the power to punish for contempt, until final determination of the case, by failing to file an objection in writing within thirty (30) days after the service on the party of the Notice of Assignment<u>first pleading is filed in the action by that party</u>, or at the first hearing on a motion heard in the Family Law Department, if heard before the expiration of the thirty (30) days.3. Unchanged <p>Section F unchanged</p>

Proposal Number 04B- 07

Title	Rule 5.7 <u>Order to Show Cause and Notice of Motion Rules</u>
Summary	New section "I" added to Rule.
Current Local Rule	See Proposed Changes Below.
Discussion	
Recommendation	
Proposed Changes	Rule 5.7 <u>Order to Show Cause and Notice of Motion Rules</u> Sections A to H unchanged <u>I. TEMPORARY SPOUSAL SUPPORT FORMULA. Temporary spousal support is generally computed by taking 40% of the net income of the payor, minus 50% of the net income of the payee, adjusted for tax consequences. In the event there is child support, temporary spousal support is calculated on the net income not allocated to child support and/or child-related expenses.</u>

~~—— (2) Ex Parte~~

~~—— A request by stipulation of all parties for a continuance to a date beyond 90 days (but within 120 days) of the arbitrator's appointment may, with the arbitrator's consent, be made to the court by ex parte motion.~~

~~—— (3) Noticed Motion~~

~~—— A party requesting a continuance must proceed by noticed motion under the following circumstances:~~

~~—— (A) The continuance requested is to a date beyond 120 days of the arbitrator's appointment;~~

~~—— (B) Either party declines to stipulate to a continuance to a date within the 90-day period;~~

~~(C) — (C) The arbitrator declines to consent to a continuance to a date within the 90-day period.~~

E. Requests to Change ADR Processes

1. It is the policy of this court that all judicial arbitration hearings shall be conducted in accordance with California Rules of Court, sections 1600-1618. At the time of the case management hearing, the court expects parties to be prepared to select the appropriate ADR process for their case. [CRC, section 212(e)(6)].

2. Parties may not switch from court ordered judicial arbitration to another form of ADR on the day of the judicial arbitration hearing. However, if the parties believe that another ADR process might be more beneficial to their case, they may request permission from the court to switch ADR processes. Parties must submit their request to the court using the Court provided "Stipulation and [Proposed] Order to {Mediation, Neutral Evaluation, etc.} in Lieu of Court Ordered Judicial Arbitration" form. [See Local Rule 2.3(h)(3)].

(Adopted, effective July 1, 1996) (Amended, effective January 1, 2005)

Proposal Number 04B-9

Title	<u>Rule 2.3 New Case Management</u>
Summary	<p><u>This change is being made to require parties, who have requested a change in date of their CMC, to provide the court with the most current information on their case before it goes to the Case Management Conference.</u></p> <p><u>The Rule is also changed to reflect the new form that parties are to complete when requesting a continuance of their arbitration hearing.</u></p>
Current Local Rule	
Discussion	<p><u>These changes are being proposed to more accurately reflect the new procedures implemented by the case management department in 2002 and to be consistent with the changes being made in Local Rule 10.1</u></p>
Recommendation	
Proposed Changes	<p><u>Rule 2.3 New Case Management</u></p> <p>(a) – (e) Unchanged</p> <p>(f) Case Management Statement</p> <p>At least 15 calendar days before the scheduled case management conference, each party shall file with the court and serve on all other parties a completed Judicial Council Case Management Statement. <u>If the case is set for further case management conference hearing(s), all parties must file updated Case Management Statements 15 calendar days prior to the scheduled hearings(s).</u></p> <p>(g) Unchanged</p> <p>(h) Stipulations to Arbitration</p> <p><u> (1) Unchanged.</u></p> <p><u> (2) It is the policy of this court to make every effort to process cases in a timely manner. Parties who elect or are ordered by the court to judicial arbitration must complete the arbitration hearing within the time frame specified by the court.</u></p> <p><u>Parties who wish to continue the arbitration hearing after the jurisdictional time frame must submit a court-“Continuance Request Form” to the court judicial arbitration administrator stating the dates of any prior continuances the length of continuance requested and the reason for the request-provided form entitled “Ex Parte Motion and Stipulation for continuance of Judicial arbitration Hearing.” Parties can obtain a copy of the form by contacting the court’s judicial arbitration administrator [See Local Rule 10.1(d)(1).</u> Continuances without adequate grounds will not be considered. A case management judge will either grant or deny the request for continuance. If the request is denied, the case may be assigned a trial date. If the request is granted, the judge will impose a new deadline by which the arbitration must be completed.</p> <p><u> (3) Unchanged</u></p>